



1654

PATENT

Attorney Docket No. PC9344B (121\*254)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: Ke et al.

Serial No.: 09/736,051

Filed: December 13, 2000

For: COMBINATION THERAPY FOR  
OSTEOPOROSIS

Group Art Unit: 1654

Examiner: Leary, L.

#17  
J.G.J  
12/3/02

RECEIVED

NOV 20 2002

Assistant Commissioner for Patents  
Washington, D.C. 20231

TECH CENTER 1600/2900

I HEREBY CERTIFY THAT THIS CORRESPONDENCE IS BEING DEPOSITED WITH THE UNITED STATES POSTAL SERVICE AS FIRST-CLASS MAIL IN AN ENVELOPE ADDRESSED TO: ASST. COMMISSIONER FOR PATENTS, WASHINGTON D.C. 20231 ON THIS 7th DAY OF November 2002.

BY: Jean M. Marshall

RESPONSE

Applicants respectfully respond to the Office Action mailed October 31, 2002. Applicants thank the Examiner for noting that claims 1-4, 6-14, 16-30, 33-42, 45-50, 52-55, 57-62, 65-69, 72-75, 79-80, 84-89 and 92 are allowable over the prior art. Claims 93-108 are rejected under 35 U.S.C. § 135 (b) as untimely. Applicants respectfully traverse.

Claims 93-108 were timely submitted for the following reasons. Pursuant to 35 U.S.C. § 135 (b), claims that are the same as or for the same or substantially the same subject matter as a claim of an issued patent may not be made in an application unless made prior to one year from the date on which the patent was granted. Here, US Patent 6,043,026 was granted on March 28, 2000. On March 27, 2001, less than one year from the date on which the '026 patent issued, Applicants submitted claims 93-108 in an amendment titled Amendment Under 37 C.F.R. § 1.607. A copy of

Serial No.: 09/736,051

PC9344B (121\*254)

this Amendment is attached. The certificate of mailing on the first page of the Amendment shows that it was mailed on March 27, 2001 in compliance with the certificate of mailing procedures in 37 C.F.R. § 1.8. Accordingly, the claims were timely filed.

For these reasons, Applicants respectfully request that the rejections be withdrawn and that an interference be declared between the present application and the '026 patent and any continuing or divisional application thereof.

No fee is believed due for the filing of this paper. If the undersigned is mistaken, however, please charge any fee due or credit any refund to deposit account 03-2775.

Respectfully submitted,

CONNOLLY BOVE LODGE & HUTZ LLP

Dated: November 7, 2002

By: Christine Hansen  
Christine M. Hansen  
Registration No. 40,634  
P.O. Box 2207  
Wilmington, DE 19899  
(302) 888-6432  
Attorney for Applicants

CMH/jm

::ODMA\MHODMA\CB;230582;1



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

**In re Application of: Ke et al.**

**Serial No.: 09/736,051**

**Filed: December 13, 2000**

**For: COMBINATION THERAPY FOR  
OSTEOPOROSIS**

**Group Art Unit: 1617**

**Examiner: Unassigned**

RECEIVED

NOV 20 2002

Commissioner for Patents  
Washington, D.C. 20231

TECH CENTER 1600/2900

I hereby certify that this correspondence is being deposited with the United States Postal Service as First Class Mail in an envelope addressed to the Commissioner for Patents, Washington, D.C. 20231 on this 27<sup>th</sup> day of March, 2001.

Jean M. Marshall  
(Printed name of person mailing paper)

Jan M. Marshall  
(Signature of person mailing paper)

Sir:

**AMENDMENT UNDER 37 C.F.R. § 1.607**

Prior to examination of the present application, please enter the following amendment.

**IN THE CLAIMS:**

Please cancel claims 31 and 32 without prejudice or disclaimer.

**Please amend claims 34 and 36 as follows:**

34. (Amended) A pharmaceutical composition comprising:
- a. a therapeutically effective amount of a first compound, said first compound being droloxifene, raloxifene, tamoxifen or idoxifene; and
  - b. a therapeutically effective amount of a second compound, said second compound being sodium fluoride.